

**NOTICE TO DEBENTURE AND
BONDHOLDERS**

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IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1963

No. 941

JAMES A. DOMBROWSKI, et al,

v.

JAMES H. PFISTER, et al.

*On Appeal from the United States District Court for the
Eastern District of Louisiana, New Orleans Division*

MOTION TO DISMISS

The purpose of this motion is to present to the Court a jurisdictional issue not heretofore raised. Since, the Court has noted probable jurisdiction in this appeal, and therefore the jurisdictional issue would not ordinarily be discussed in the briefs of the parties, it is thought proper to present to the Court preliminarily this question, which has not been presented to the court below or in the motion to dismiss or affirm heretofore filed in this Court. Should the Court prefer to consider this question at the time of the argument on the appeal, leave is requested to include authority and argument on this issue in the briefs of appellees. It should be noted also that this issue came to the attention of counsel for appellees in the course of their research following the receipt of the

Transcript of Record, and for this reason was not included in the motion to dismiss or affirm.

The issue is whether the trial court had jurisdiction over the cause of action. Jurisdiction is a threshold question which can be raised at any time. *Mansfield, Coldwater and Lake Michigan Railway Co. v. Swan*, 111 U. S. 379. Before hearing argument on this appeal, the Court may want to consider the jurisdictional question to determine whether the appeal is properly before the Court.

Paragraph 9 of the complaint herein, found in the Transcript of Record, on page two, asserts jurisdiction on several different bases, which will be discussed individually.

1. Title 28, Section 1331 (a), United States Code. This section relates to actions arising under the Constitution, laws or treaties of the United States, and requires a minimum jurisdictional value. Other than the assertion in paragraph ten of the complaint that the amount in controversy exceeds \$10,000, nowhere in the complaint is there any claim, demand, or other indication of monetary damage or value. This is an equity action seeking injunctive relief, but the requirement of minimum jurisdictional value is still applicable. There is nothing in the complaint to establish any value other than the jurisdictional assertion, and this is insufficient to satisfy the statutory jurisdictional requirement.

2. Title 28, Section 1343 (3, 4) United States Code. This is the civil rights provision of the Judicial Code. The caption of the complaint herein lists the defendants (appellees) individually and in their official capacities, but the only allega-

tions of the complaint as to any conspiratorial actions on the part of the individual defendants, as distinguished from the state agencies they represented, are as follows:

a. In paragraph 13 of the complaint defendants Pfister and Willie are alleged to have obtained a warrant of arrest, and defendant Pfister was alleged to have threatened and continued to threaten to attempt to obtain a new prosecution and to hold legislative hearings on the part of his committee.

b. In paragraph 14 of the complaint defendant Pfister is alleged to have utilized certain photostats based on which the committee of which he was chairman adopted a resolution calling on defendant Garrison to prosecute officials of the corporation, and defendant Pfister was alleged to have publicly announced the intention of delivering to defendant Garrison copies of documents illegally seized from the plaintiffs for the purpose of the institution of criminal proceedings.

Thus defendants Davis, Gremillion, and Burbank are nowhere mentioned by name in the allegations of conspiracy. Defendant Garrison is only alleged to have been named in a resolution of a legislative committee. Defendant Willie is alleged only to have obtained arrest and search warrants which have been partially vacated. Defendant Pfister is also alleged to have threatened new prosecutions and legislative hearings before the committee of which he was chairman. The conspiracy alleged is at best attributable to the various agencies of the State, rather than the actions of individuals. As such, under the decision of this Court in *Monroe v. Pape*, 365 U. S. 167, where it was held that jurisdiction under the Civil Rights Act is limited to actions against individuals, it is submitted

that this is not a case properly falling within the jurisdiction of the federal courts under that statute.

As said in *Ex parte Young*, 209 U. S. 123:

"In making an officer of the State a party defendant in a suit to enjoin the enforcement of an act alleged to be unconstitutional it is plain that such officer must have some connection with the enforcement of the act, or the court is merely making him a party as a representative of the State, and thereby attempting to make the State a party."

The Court said further:

"It is proper to add that the right to enjoin an individual, even though a state official, from commencing suits under circumstances already stated, does not include the power to restrain a court from acting in any case brought before it, either of a civil or criminal nature, nor does it include power to prevent any investigation or action by a grand jury. The latter body is part of the machinery of a criminal court and an injunction against a state court would be a violation of the whole scheme of our Government. If an injunction against an individual is disobeyed, and he commences proceedings before a grand jury or in a court, such disobedience is personal only, and the court or jury can proceed without incurring any penalty on that account."

Since the individual plaintiff is now under indictment and awaiting trial following grand jury indictment, the federal district court below would also be barred from issuing an injunction by virtue of Title 28, Section 2283, of the United

States Code, even if this Court were to reverse the court below, and remand the case for further proceedings.

3. Title 28, Section 2281, United States Code. This is the statutory provision for a three-judge federal district court in injunction actions involving asserted unconstitutionality of state statutes, and does not confer federal jurisdiction.

4. Title 28, Sections 2201 and 2202, United States Code. These are the sections of the Judicial Code providing for relief in the form of declaratory judgment on the part of a federal district court in "a case of actual controversy within its jurisdiction," and is not an independent source of federal jurisdiction.

5. Title 42, Sections 1971, 1981, 1983 and 1985, United States Code. These are the additional civil rights provisions, the jurisdictional section of which is found at Title 28 of the United States Code, Section 1343, and which is discussed above under heading number 2.

6. The Constitution of the United States, and particularly the First, Fourth, Fifth and Fourteenth Amendments thereto. The federal jurisdictional provision of the Judicial Code relating to actions arising under the Federal Constitution is Section 1331 of Title 28, United States Code, and is discussed under heading number 1 above.

It is not the purpose of appellees to avoid consideration by this Court of the Constitutionality of the statute involved in this appeal, but it is their position that such consideration should properly arise on appeal from the Supreme Court of the State of Louisiana, based on consideration by the courts

of that State, rather than the present appeal, where the Court does not have the benefit of the opinion of any Court below on this question.

Wherefore, the foregoing motion being considered, Defendant-Appellee James H. Pfister respectfully prays that the appeal herein be dismissed.

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CERTIFICATE

I certify that a copy of the foregoing motion to dismiss was served upon plaintiffs-appellants by mailing same to their counsel of record, postage prepaid, at their office address, this _____ day of November, 1964.

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Counsel for James H. Pfister
Defendant-Appellee